

1 Honorable Jamal N. Whitehead
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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 KURT A. BENSHOOF,
9 BRIANA D. GAGE,

10 Plaintiffs,

11 v.

12 CITY OF SEATTLE, et al.,

13 Defendants.

14 No. 2:23-cv-01392-JNW

15 DEFENDANT JUSTIN BOOKER’S
16 REPLY IN SUPPORT OF MOTION TO
17 DISMISS UNDER FRCP 12(b)(5)

18 NOTE ON MOTION CALENDAR:
19 JUNE 20, 2024

20 Defendant Justin O. Booker files this Reply in support of his pending Motion to Dismiss
21 and asks this Court to dismiss Plaintiffs’ Complaint against him for failing to properly serve him
22 with the Summons and Amended Complaint pursuant to Federal Rule of Civil Procedure (“Rule”)
23 12(b)(5). Defendant Booker acknowledges that Plaintiffs have sought an extension of time to
24 respond to his motion. Dkt. #235. However, should this Court fail to grant the motion, Defendant
25 Booker files this Reply in an abundance of caution. Should the Court grant Plaintiffs’ motion,
26 Defendant Booker respectfully reserves the ability to fully reply to any response brief subsequently
27 filed.

28 **I. REPLY**

29 As noted in Defendant Booker’s motion to dismiss, service by publication was not
30 appropriate or in compliance with the statutory requirements. Under Federal Rule of Civil
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32 BOOKER’S REPLY IN SUPPORT OF MOTION
33 TO DISMISS - 1
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1 Procedure 4(c)(1), Plaintiffs are “responsible for having the summons and complaint served within
2 the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes
3 service.” In this case, Plaintiffs have failed to comply with state law governing service. They do
4 not state that they attempted to mail the Summons and Amended Complaint. *See* Dkt. #195. In
5 fact, they do not describe any attempts at service of Mr. Booker at all. *Id.* Instead, they have relied
6 upon service by publication. However, even that mode was accomplished improperly. Under
7 Washington law, service by publication is allowed only when “the defendant cannot be found
8 within the state, and upon the filing of an affidavit of the plaintiff . . . with the clerk of the court,
9 stating that he or she believes that the defendant is not a resident of the state, or cannot be found
10 therein, and that he or she has deposited a copy of the summons . . . and complaint in the post
11 office, directed to the defendant at his or her place of residence, unless it is stated in the affidavit
12 that such residence is not known to the affiant, and stating the existence of one of the cases
13 hereinafter specified,” none of which are applicable in this matter. RCW 4.28.100. Plaintiffs’
14 Affidavit does not meet those requirements. Accordingly, this matter should be dismissed against
15 Mr. Booker.

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17 DATED this 20th day of June, 2024.

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20 PACIFICA LAW GROUP LLP

21
22 By /s/ Sarah S. Mack
23 Sarah S. Mack, WSB#32853
24 Attorney for Defendant Justin Booker

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27 BOOKER’S REPLY IN SUPPORT OF MOTION
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